



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,974	06/07/2001	Devin F. Hosea	60136.0097US1	2589
94140	7590	07/14/2010		
Merchant & Gould - Cox PO Box 2903 Minneapolis, MN 55402				
EXAMINER				
SHANG, ANNAN Q				
ART UNIT		PAPER NUMBER		
2424				
MAIL DATE		DELIVERY MODE		
07/14/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/877,974	<b>Applicant(s)</b> HOSEA ET AL.
<b>Examiner</b> ANNAN Q. SHANG	<b>Art Unit</b> 2424

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/Annan Q Shang/  
Primary Examiner, Art Unit 2424

Continuation of 11, does NOT place the application in condition for allowance because: With respect to the rejection of the last office action mailed 01/13/10, Applicant discusses the prior arts of record and the claim invention and argues that the primary prior art of record, Herz, merely teaches a system for delivering programs and does not disclose "...presenting programming recommendations in an interactive program guide presenting programs rearranged to reflect a predicted interest of the user based on the affinity and confidence measures of the user profile associated with the user." (see page 2+ of Applicant's Remarks).

In response, Examiner notes Applicant's arguments, however Examiner disagrees. Herz discloses: discloses a set-top box for profiling iTV users and a method for profiling iTV users. Herz gathers user-related profile data (TV programs and advertisements) by monitoring interactions between an iTV user and an iTV to extract data received at the iTV, data transmitted by the user from the iTV and interactions between the user and the iTV; storing the gathered user-related profile data in an interaction database; periodically retrieving the gathered user-related profile data in the interaction database; building a profile associated with the user of the iTV based on retrieving the gathered user-related profile data in the interaction database and data in a local categorized program database and identifying program(s) watched by the user (figs.1-11, abstract, col.5, lines 30-59, col.10, lines 15-30, col.12, lines 7-25, col.13, line 42-col.14, line 23, col.26, lines 38-53, col.27, lines 39-61 and col.30, line 18-col.31, line 30) and presents programming recommendations in an interactive program guide presenting programs to reflect a predicted interest of the user based on the profile associated with the user (col.10, lines 15-30, col.12, lines 7-25, col.13, line 42-col.14, line 23, col.26, lines 38-53, col.27, lines 39-61 and col.30, line 18-col.31, line 30). Herz further discloses passive monitoring to gather a user profile, i.e., "without direct interaction by the user" (col.27, line 40-61 and col.30, line 17-col.34, line 14), which meets claim limitations "...wherein the user profile includes affinity and confidence measures for programs..." further discloses gathering information on the Internet and other networks (col.52, lines 40-49). Herz does not clearly teach, presenting programming recommendations in an interactive PG, presenting programs rearranged to reflect a predicted interest of the user based on the profile associated with the user. However, in analogous art, Alexander teaches systems and methods for displaying TV programs, video, ads information, etc., and further presenting programming recommendations in an interactive PG, presenting programs rearranged to reflect a predicted interest of the user based on the profile associated with the user, including gathering profile information as the interaction to various websites (figs.1-9, col.3, line 21-col.4, line 27, col.5, line 56-col.7, line 45, col.14, line48-col.15, line 1+ and col.30, line 45-col.31, line 1+). Hence the 103(a) rejection is proper, meets all the claims limitations. The finality of the last office action is hereby maintained..